



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 15, 2004

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2004-3049

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199841.

The Coppell Independent School District (the "district") received a request for the "full and complete employment file" for two named individuals and "all notes and memorandums" related to a specified hearing. You claim that a portion of the requested information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the district has previously received similar requests for information in which you requested opinions from this office. In response, this office issued Open Records Letter Nos. 2003-7890 (2003), 2003-7102 (2003), 2003-7101 (2003), and 2003-7100 (2003). In regard to information in the current request that is identical to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior rulings were based have changed, you may continue to rely on these rulings as previous determinations. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In regard to the responsive information that is not subject to our previous rulings, to the extent that any additional responsive information exists, we assume it has been released. If not, you must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open

Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you state that a tape recording of the closed session portion of a specified Board of Trustees meeting is responsive to the request for information. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by statute. Section 551.104(c) of the Government Code provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order* issued under Subsection (b)(3).” (emphasis added). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Therefore, the district must withhold any responsive certified agendas or tapes of closed meetings pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Section 552.114 of the Government Code excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and the Family Educational Rights and Privacy Act of 1974 (“FERPA”). Open Records Decision No. 539 (1990). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). “Education records” means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Section 552.026 of the Government Code provides that “information contained in education records of an educational agency or institution” may only be released under the Public Information Act in accordance with FERPA.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a “student record,” insofar as the “student record” is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978). Such information includes both information that directly identifies a student, as well as information that, if released, would allow the student’s identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student’s

handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). Having reviewed the submitted information, we agree that most of the information you have highlighted, and the additional information we have marked, must be redacted from the submitted records pursuant to section 552.114 as well as FERPA. The remaining highlighted information, which we have marked, is not student identifying, and it must be released along with the remainder of the submitted information.

In summary, we conclude that: 1) for information that is identical to the information previously requested and ruled upon by this office, the district may continue to rely on Open Records Letter Nos. 2003-7890, 2003-7102, 2003-7101, and 2003-7100 as previous determinations; 2) the district must withhold any responsive certified agendas or tapes of closed meetings pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code; and 3) the district must withhold the student identifying information pursuant to section 552.114 of the Government Code and FERPA. All remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 199841

Enc: Submitted documents

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